



Kathy D. Patrick

Partner

713.751.5253

kpatrick@gibbsbruns.com

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Via Email and ECF

Special Master Thomas P. Scrivo, Esq.
O'Toole Scrivo, LLC
14 Village Park Road
Cedar Grove, NJ 07009
tsrivo@oslaw.com

Re: Occidental Chemical Corp. v. 21st Century Fox Am., Inc., et al.
Civil Action No. 2:18-cv-11273-MCA-LDW

Dear Special Master Scrivo:

OxyChem requests the following items be included on the agenda for the January 18, 2023 status conference.

1. Request to Stay Proceedings

The Defendants have requested a six-month stay of this case pending the Court's consideration of the EPA's proposed settlement with certain Defendants in *United States v. Alden Leeds, Inc.*, No. 2:22-cv-07326 (D.N.J. filed Dec. 16, 2022). See Dkt. 2246 (12-20-2022 ltr. from Defendants to Court requesting leave to file motion for stay); 12-21-2022 ltr. from Defendants to Special Master.

OxyChem does not oppose the requested stay. However, OxyChem disputes many of the representations submitted by the Defendants in their request, including the purported basis and effect of the proposed settlement and consent decree. The SPG Defendants' agenda letter rehashes many of these same assertions. See Dkt. 2262 at 3 (discussing "contribution protection"). As OxyChem has previously explained, the EPA is free under CERCLA to settle its own claims against any of the defendants, but it may not release responsible parties from claims for costs *OxyChem* has and will incur. OxyChem does not waive and reserves its right to challenge Defendants' representations at the appropriate time.

Action Requested: None at this time.

2. SPG's Reliance on the "Batson Report"

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In support of their request for a stay, the Defendants have relied on, referenced, and submitted copies of the so-called “Batson Allocation Report,” the result of the EPA-sponsored, closed-door allocation proceeding. *See, e.g.*, Dkt. 2246-4 (Ex. 1 to Defendants’ Brief in Support of Unopposed Motion for a Stay of Proceedings). Setting aside the many substantive and methodological flaws that are fatal to the report’s conclusions, Defendants’ reliance on this report is impermissible and contravenes CERCLA and the Administrative Procedure Act. As the Defendants are aware, this Court lacks jurisdiction to review Batson’s “non-binding” report, and the Batson report is not admissible as evidence in any proceeding. 42 U.S.C. § 9622(e)(3). OxyChem reserves its right to move to strike the Batson report from the record.

OxyChem also expressly reserves its right to seek all submissions or communications relating to the Batson allocation process and his report, because Defendants have waived any privilege asserted as a basis to withhold such materials from discovery.

Action Requested: None at this time.

3. SPG’s Recent Submissions Regarding Discovery Disputes

Members of the SPG recently filed three submissions relating to discovery disputes: (1) a request that the Special Master permit discovery of OxyChem’s “financial condition” (Dkt. 2245); (2) the SPG’s Opposition to OxyChem’s Motion for Protection from the SPG’s 30(b)(6) Notices (Dkt. 2257); and (3) Defendant MI Holding’s Opposition to OxyChem’s Motion for Protection from the SPG’s 30(b)(6) Notices (Dkt. 2256). When the stay is lifted or the Defendants’ motion to stay denied, OxyChem will respond timely once the Court or Special Master establishes a schedule for submissions and consideration of outstanding discovery requests and, in addition, expressly reserves the right to seek leave to file replies in support of its Motion for Protection from the SPG’s 30(b)(6) Notices.

Action Requested: None at this time.

Very truly yours,



Kathy D. Patrick

/s/ *John J. McDermott*

John J. McDermott

cc: All counsel of record (via ECF)